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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CITY OF SAN DIEGO,
12 Plaintiff,
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14 v.

15 NATIONAL STEEL AND
SHIPBUILDING COMPANY; et al.,
16 Defendants.
17

18 AND RELATED CROSS-ACTIONS
AND COUNTERCLAIMS
19
20

CASE NO. 09-CV-2275 WQH (JLB)

**ORDER CONFIRMING GOOD
FAITH SETTLEMENT BETWEEN
BAE SYSTEMS SAN DIEGO SHIP
REPAIR INC., SOUTHWEST
MARINE, INC., AND THE SAN
DIEGO UNIFIED PORT DISTRICT
AND BARRING AND DISMISSING
CLAIMS AGAINST THE PORT
DISTRICT**

21 The Joint Motion of BAE Systems San Diego Ship Repair Inc., Southwest
22 Marine, Inc. (collectively, "BAE Systems") and San Diego Unified Port District
23 ("Port District") for Order Confirming Settlement and Barring and Dismissing
24 Claims came on regularly for hearing before this Court on October 5, 2015, the
25 Honorable William Q. Hayes presiding.

26 After considering the moving and opposition papers, declarations submitted
27 by the parties, the Settlement Agreement submitted to the Court for approval
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(attached to the Declaration of Michael S. Tracy) (the "Settlement Agreement") and the record as a whole, the **COURT HEREBY FINDS THAT** the Settlement Agreement entered into by and between BAE Systems and the Port District is in the public interest, is fair and reasonable, both procedurally and substantively, consistent with the purposes of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. section 9601, et seq., and the Uniform Comparative Fault Act ("UCFA"), 12 U.L.A. 147, and was entered into in good faith under California Code of Civil Procedure sections 877 and 877.6 and the rule of *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488 (1985), and that the Port District is entitled to contribution and indemnity protection under federal and state law theories for the apportionment of liability among alleged joint tortfeasors.

This matter having been briefed and submitted for decision, and good cause appearing,

IT IS HEREBY ORDERED that the Motion is **GRANTED**, and the Settlement Agreement is **APPROVED**.

IT IS FURTHER ORDERED that:

1. The Settlement Agreement is hereby approved as a good faith settlement and shall be afforded all the rights and protections that accompany this determination.

2. The Court further finds and determines that Section 6 of the UCFA is adopted in this case for purposes of determining the legal effect of the Settlement Agreement, which means the proportionate share rule (and not the pro tanto rule of the Uniform Comparative Fault Among Tortfeasors Act ("UCATA")) shall apply to reduce BAE Systems' claims against non-settling parties.

3. Pursuant to Section 6 of the UCFA, Section 877.6 of the California Code of Civil Procedure, and CERCLA section 113(f), any and all claims for contribution or equitable indemnity against the Port District arising out of the facts

1 alleged in the Complaint, counterclaims, and cross-claims in this Action, regardless
2 of when such claims are asserted or by whom, relating to Covered Matters under
3 the Settlement Agreement are hereby **BARRED**. Such claims are barred regardless
4 of whether they are brought pursuant to any federal or state statute, common law, or
5 any other theory, as any such claims against the Port District arising out of the facts
6 alleged in this Action are in the nature of contribution claims arising out of a
7 common liability, whether framed in terms of federal or state statute or common
8 law.

9 4. Subject to Paragraph 9 of this Order and this Order becoming final and
10 effective, all claims, cross-claims and counterclaims by and between BAE Systems
11 and the Port District in the Action with respect to "Covered Matters" under the
12 Settlement Agreement (which expressly does not include "Excluded Matters") are
13 hereby dismissed with prejudice.

14 5. Subject to Paragraph 6(a), below, any and all claims by the Port
15 District and BAE Systems, and each of them, against each other, whether in claims,
16 cross-claims or counterclaims, relating to "Excluded Matters" shall be reserved and
17 not deemed barred by entry of judgment or dismissal pursuant to the Settlement
18 Agreement.

19 6. Subject to this Order becoming final and effective:

20 (a) All claims made by the Port District against BAE Systems and by
21 BAE Systems against the Port District, and by each of them against any other
22 party, whether alleged in a counterclaim or cross-claim, relating to Polygon
23 SW-29 and the Tidelands Property, including, without limitation, contract-
24 related claims, shall be dismissed WITHOUT prejudice, subject to the terms
25 of the Tolling and Standstill Agreement previously entered into by and
26 between BAE Systems, the Port District, San Diego Gas and Electric
27 Company ("SDG&E"), the City, Star & Crescent Boat Company, and
28 Campbell Industries;

1 (b) All cross-claims by the Port District against Campbell Industries
2 and against National Steel and Shipbuilding Company ("NASSCO") (to the
3 extent any such claims remain against NASSCO) with respect to the
4 following matters are hereby dismissed with prejudice: (1) any and all
5 claims that were, that could have been, that could now be, or that could
6 hereafter be asserted by the Port District against Campbell Industries or
7 NASSCO as of the Effective Date of the Settlement Agreement arising out of
8 or in connection with alleged COC contamination of the sediments within the
9 Remedial Footprint; (2) any and all costs incurred by the Port District that
10 have arisen out of, or that arise out of, or in connection with, the
11 investigation and remediation required to comply with all legally enforceable
12 requirements imposed by the Agency in connection with the implementation
13 of the CAO, including all reasonably necessary measures required to satisfy
14 the requirements of the CAO or any amendments thereto; and (3) all claims
15 asserted by the Port District against Campbell Industries in this Action and
16 accruing prior to the execution of the Settlement Agreement for breach of
17 contract or express contractual indemnity relating to the alleged COC
18 contamination of the sediments within the Remedial Footprint, but not as to
19 the remainder of the Shipyard Sediment Site or the Tidelands
20 Property. Subject to paragraph 6(a), above, all other claims by the Port
21 District against Campbell Industries in this Action are hereby dismissed
22 without prejudice. Any and all claims the Port District has or may have in
23 the future against Campbell Industries and/or NASSCO relating to any
24 Excluded Matters are expressly reserved and not deemed barred by any
25 dismissals in this Order. As to all dismissals in this paragraph 6(b), each
26 party shall bear its own attorney's fees, costs and expenses;

27 (c) Except with respect to (1) Polygon SW-29 and (2) the Tidelands
28 Property, the Port District's Twentieth Claim for Relief (Express Contractual

1 Indemnity) and Twenty-First Claim for Relief (Breach of Contract) against
 2 SDG&E are dismissed WITH prejudice to the extent they relate to the marine
 3 sediment contamination existing at the Site; and

4 (d) With respect to (1) Polygon SW-29 and (2) the Tidelands Property,
 5 the Port District's Twentieth Claim for Relief and Twenty-First Claim for
 6 Relief against SDG&E are dismissed WITHOUT prejudice subject to the
 7 terms of the Tolling Agreement.

8 For purposes of this Order, the terms "Agency," "CAO," "COCs," "Excluded
 9 Matters," "Remedial Footprint," "Polygon SW-29," "Site," and "Tidelands
 10 Property" shall have the same meaning as in the Settlement Agreement.

11 7. Pursuant and subject to the Agreement for Dismissals and Tolling
 12 Agreement entered into by and between the Port District and the City of San Diego
 13 ("City"), upon entry of an order in this Action dismissing (i) Plaintiff's First Cause
 14 of Action of the Complaint for "cost recovery" pursuant to Section 107(a)(4) of
 15 CERCLA, and (ii) Plaintiff's Seventh Cause of Action of the Complaint for "cost
 16 recovery" pursuant to Section 13304 of the California Water Code, against the Port
 17 District for "Covered Matters" (as said term is defined in the settlement agreement
 18 between the City and BAE Systems), and this Order becoming final and effective,
 19 then, and only then:

20 (a) The Port District's First and Sixth Claims for Relief of its
 21 Counterclaim [Dkt. No. 11-1] and its First and Sixth Claims for Relief of its
 22 Third Amended and Supplemental Cross-Claims ("TACC") [Dkt. No. 308]
 23 against the City are dismissed WITH prejudice solely to the extent they relate
 24 to "Covered Matters" under the Settlement Agreement (which expressly does
 25 not include "Excluded Matters"); and

26 (b) The Port District's Forty-First Claim for Relief and Forty-Second
 27 Claim for Relief of its TACC against the City for Express Contractual
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1 Indemnity and Implied Contractual Indemnity, respectively, are dismissed
2 WITHOUT prejudice.

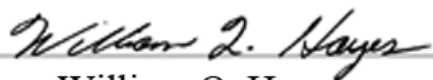
3 8. Any other claims expressly reserved under the Settlement Agreement
4 shall be reserved and not deemed barred by entry of judgment or dismissal pursuant
5 to the Settlement Agreement.

6 9. The Court shall retain jurisdiction over both the subject matter of the
7 Settlement Agreement and the parties to the Settlement Agreement for the duration
8 of the performance of the terms and provisions of the Settlement Agreement for the
9 purpose of enabling BAE Systems and the Port District, and each of them, to apply
10 to the Court at any time for such further order, direction, and relief as may be
11 necessary or appropriate to construe, implement, or enforce compliance with the
12 terms of the Settlement Agreement or for any further relief as the interest of justice
13 may require.

14 10. BAE Systems and the Port District shall each bear their own costs and
15 expenses, including attorneys' fees in this Action, as between BAE Systems and the
16 Port District, through the date of this Order but shall retain their respective right to
17 seek costs and expenses, including attorneys' fees, from other parties to this Action
18 to the extent such claims have not been dismissed or barred.

19 **IT IS SO ORDERED.**

20 Dated: November 13, 2015

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22 Hon. William Q. Hayes
23 United States District Judge
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